

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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INDUSTRIAL WINDOW CORP.,

Case No.: 07 CV 10959  
(Rakoff, J.)

Plaintiff,

-against-

FEDERAL INSURANCE COMPANY,

Defendant.

-----X  
**ANSWER**

Defendant, Federal Insurance Company ("Federal"), by its attorneys, Milber Makris Plousadis & Seiden, LLP, as and for its answer to the complaint alleges, on information and belief, as follows:

1. Admits that Federal issued a payment bond (No. 8189-23-00) listing Federal as surety and Beys General Construction Corp. as principal and begs leave to refer to that bond for the terms and conditions thereof. Except as so admitted, denies each and every other allegation contained in paragraph "1" of the complaint.
2. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of the complaint.
3. Denies the allegations contained in paragraph "3" of the complaint.
4. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of the complaint.
5. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "5" of the complaint.
6. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "6" of the complaint.
7. Admits the allegations contained in paragraph "7" of the complaint.

**AS AND FOR AN ANSWER TO COUNT 1**

8. In response to the allegations set forth in paragraph "8" of the complaint, the undersigned defendant repeats, reiterates and realleges each and every response applicable to the allegations contained in paragraphs "1" through "7" of the complaint as if fully set forth at length herein.

9. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "9" of the complaint.

10. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "10" of the complaint.

11. Admits that Federal issued a payment bond (No. 8189-23-00) listing Federal as surety and Beys General Construction Corp. as principal and begs leave to refer to that bond for the terms and conditions thereof. Except as so admitted, denies each and every other allegation contained in paragraph "11" of the complaint.

12. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "12" of the complaint.

13. Denies the allegations contained in paragraph "13" of the complaint.

14. Denies the allegations contained in paragraph "14" of the complaint.

15. Denies the allegations contained in paragraph "15" of the complaint.

16. Denies the allegations contained in paragraph "16" of the complaint.

17. Denies the allegations contained in paragraph "17" of the complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

18. This action is barred by the alternate dispute resolution clause incorporated into the payment bond and the underlying subcontract between plaintiff and Beys General Construction Corp.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

19. The complaint fails to state a cause of action upon which relief can be granted against Federal.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

20. Plaintiff's complaint is barred by its failure to give notice as required by State Finance Law Section 137 and/or as required by contract or bond.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

21. Plaintiff's claims are barred by virtue of the doctrines of laches, equitable estoppel and/or avoidable consequences.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

22. Plaintiff's claims are barred by virtue of the doctrines of waiver and release.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

23. Plaintiff lacks standing to bring this action.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

24. Plaintiff's claims are barred by unclean hands.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

25. Plaintiff's claims herein are barred by the applicable statute of limitations.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

26. Plaintiff's claims are barred by plaintiff's failure to satisfy applicable conditions precedent for the payment bond and/or the underlying subcontract.

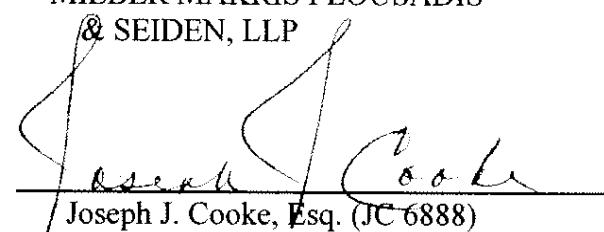
**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

27. Plaintiff's claims are barred due to plaintiff's breach of contract.

**WHEREFORE**, the defendant Federal Insurance Company demands judgment:

- (A) Dismissing the complaint;
- (B) Awarding it the costs and disbursements of this action; and
- (C) Awarding it such other and further relief as this Court may deem just, proper and equitable.

Dated: Woodbury, New York  
January 21, 2008

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